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ABSTRACT

Challenges for bilingual legal education: evidence from a Malaysian Law Faculty.

Several common law jurisdictions (e.g. Bangladesh, Hong Kong) and some civil law systems (Macao, Timor Leste) function in two or more languages as a result of retaining laws and legal networks that evolved in a colonial medium while attempting to enhance legal transparency or conform to national language policies by recognizing local languages of wider communication. Unlike systems that mediate language difference through interpreting and translation, bilingual systems place a particular linguistic onus on lawyers, many of whom have to switch languages when switching communication sites (superior court, subordinate court, office etc.), communicative tasks (drafting litigation, commercial documents or submissions), or interlocutors (judges, witnesses, clients). It might be expected that bilingual teaching and the provision of bilingual resources at law school would be indispensable to raising proficiently bilingual lawyers. Yet comprehensive bilingual legal education appears unusual.

The study reported on here focused on language policies and practices in the law faculty of the University of Malaya, the oldest of six public law-teaching institutions in Malaysia, where the medium of law is Malay but English is also admitted officially and used widely. Investigations were conducted over a year using a multifunctional approach influenced by the paradigm of language planning that targeted language status (e.g. curricula), corpus (teaching and research materials), acquisition (teaching and learning strategies) and discourse (mission statements, students' and teachers' views). Research methods included documentary analysis, surveys, interviews, focus groups and class observations.

Despite the likelihood that most lawyers will need both Malay and English upon admission, law teaching emerged not so much as a purposeful inculcation of bilingual competence across a range of legal tasks as a series of compromises between policies favouring Malay and practices regarding English as more important – whether because of the kind of lawyers the faculty hopes to produce or because of recognition that English is the weaker language for most students when they enter the university. Some lecturers habitually switch between the two languages, and in theory students may choose which one to write reports and exams in. In practice, however, most lecturers favour English, as do students themselves despite generally feeling more confident in Malay. English legal resources in the library and on websites greatly outnumber those in Malay. Preference for English seems to be influenced by a view that the tasks lawyers perform in it generally impose more of a linguistic burden than those carried out in Malay.

Professor Richard Powell
Dr Chew Li Hua

1. BILINGUAL LAW: WHERE & WHY?

Bilingual common law proceedings & legislation in Asia

Non-English proceedings		Legislation	
Routinely in apex ct. & below	Myanmar	Hong Kong	All new enactments. Comprehensive translation of English acts
Occasionally in apex ct., routinely in those below	Bangladesh Malaysia	Bangladesh Malaysia Myanmar Sri Lanka	All new enactments. Extensive translation of English acts
Extensively in High Ct. & below	Sri Lanka	India	Most new enactments. Many English acts translated
Some oral & documentary use in higher cts, extensive use below	Hong Kong India Pakistan	Pakistan Philippines	A few enactments translated

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1. BILINGUAL LAW: WHERE & WHY?

Bilingual common law proceedings & legislation elsewhere

Non-English proceedings		Legislation	
Kiswahili routine in lower courts	Tanzania	Tonga	All legislation bilingual
Tongan exclusively in lower courts	Tonga	Ireland	Limited
Irish occasionally at all levels	Ireland	Tanzania	Limited
Kiswahili in lower courts	Kenya	Kenya	Limited

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1. BILINGUAL LAW: WHERE & WHY?

Examples of bilingual civil law proceedings & legislation

Courtroom		Legislation	
Portuguese & Tetun (+semi-off. English & Indonesian)	Timor Leste	Timor Leste	Portuguese, some Tetun
Portuguese & Chinese (+unoff. English?)*	Macao	Macao	Portuguese & Chinese
Parallel French & Flemish streams	Belgium	Belgium	French, Flemish
Parallel French, German & Italian streams	Switzerland	Switzerland	French, German, Italian

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2. CHALLENGES FOR LEGAL EDUCATION

Common law education in Asia

Qualifying courses and exams offered in state languages.	Bangladesh India Pakistan
Courses in Sinhala, Tamil or English but requirement for exams in English recently reinstated.	Sri Lanka
Exams may be taken in Malay but all qualifying courses have heavy English component.	Malaysia
All qualifying courses and exams in English.	Hong Kong Myanmar Philippines
Law studied in English overseas.	Brunei

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2. CHALLENGES FOR LEGAL EDUCATION

Requirements for admission to Malaysian bar

- Degree from qualifying institution:
 - UIA, UiTM, UKM, UM, MMU
 - National University of Singapore
 - England and Wales solicitor
 - London or Dublin barrister
- Degree from approved Malaysian or Australian, NZ, UK institution plus Certificate of Legal Practice (CLP) *
- Certified proficiency in Malay language
 - typically fulfilled by credit in SPM school exam, sometimes by GCE
 - public universities also require Malay SPM or equivalent
 - otherwise Bar Malay Exam must be passed
 - ◆ oral questions on general topics and a piece of legislation, with focus on translating from English into Malay

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2. CHALLENGES FOR LEGAL EDUCATION

Language policy and practice in Malaysian law

- Malay the official medium of proceedings and required for documentary submissions
- English admissible at discretion of judges 'in interests of justice'
- Legislation bilingual, English authoritative pre-1967, Malay thereafter
- No rules for private sector
- In practice English still used widely in higher courts, corporate & commercial law, arbitration, but Malay dominates lower courts, criminal law, government dealings
- Many lawyers also work in *Syariah* sector, dominated by Malay

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2. Multilingualism

Education system:

National (Malay+)
Vernacular (Chinese/ Tamil+)
International/private
(English+)



2. Multilingual+ multicultural +multijuridical

Education system:

National (Malay+)
Vernacular (Chinese/
Tamil+)
International/private
(English+)

Legal Practice:

Private/commercial
criminal, government
arbitration, mediation

Jurisdictions:

Federal (East&West):
common law & statute
State: *Syariah* +
Customary

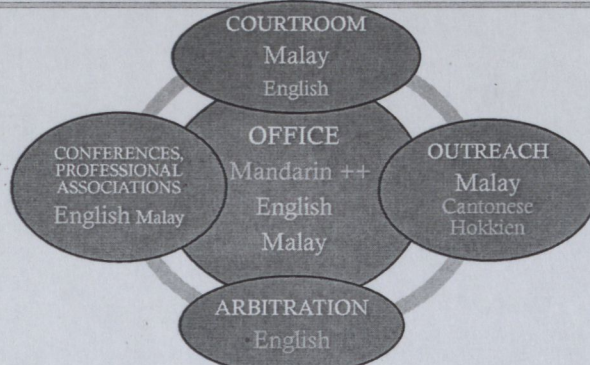
Professional stakeholders:

Judiciary, bar, police,
AGO

Lay participants:

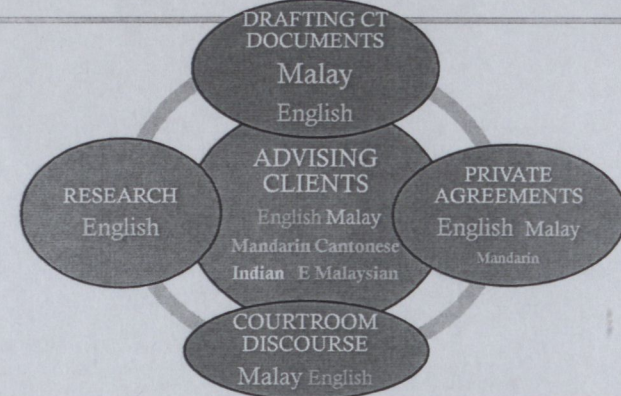
Civil clients, criminal
clients, corporations,
NGOs

Example of lawyers' language use by **site**



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Lawyers' language use by **task**



2. CHALLENGES FOR LEGAL EDUCATION

Language practices in Malaysian legal education

- UM & UKM law faculties officially bilingual
 - UM: some courses in Malay, students have choice for exam
 - UKM: one question in each paper must be answered in other language
- all other public and private law schools teach in English only and most require it for exams, but many have a compulsory legal Malay course: focus on lexis

◆ Only 20 candidates take CLP in Malay p.a.

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2. CHALLENGES FOR LEGAL EDUCATION

View from the bar

- Reports at least since 1992 (Ahmad et al) of students' inability to use legal resources, overwhelmingly in English
- Bar Council Employability Survey (2012):
 - without doubt the main concern voiced by employers was new entrants not sufficiently capable in spoken or written English (BC President)*
- CLP examiners instructed to overlook language errors

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3. SCOPE, AIMS & METHODS OF CURRENT STUDY

Scope: Language preferences of UM law teachers & students
 • limited comparisons with other law-teaching institutions

Aims: Is students' language proficiency adequate for legal studies and legal practice?

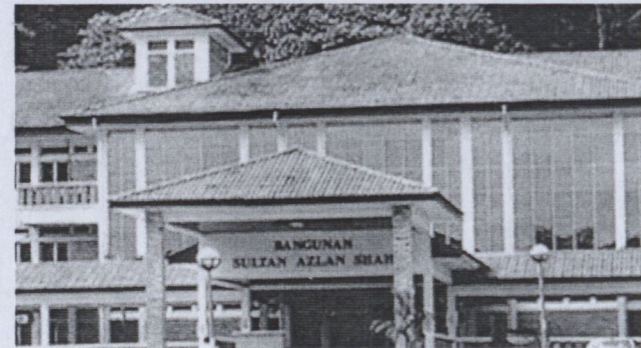
In what language(s) is law being taught and learnt?

Does language preference influence career choice?

Methods: Survey of 400 students about language preference & practice
 Focus group interviews with 200 students
 Interviews with law lecturers, language lecturers, pupil masters
 Observations of law lecturers (12 hours)
 Documentary review: curricula, professional attachment reports

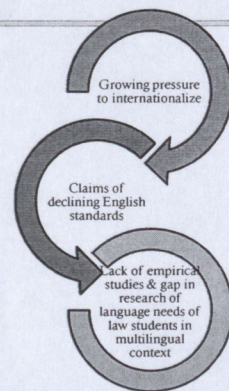
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3. Baseline study on communication skills of students at Faculty of Law



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3. Motivations for study



3. Components of study

Researchers:
 4 law teachers,
 4 linguists

Research targets:

1. English/Malay academic proficiency
2. Study skills
3. Professional communication skills

Evaluation criteria:

1. Standardised proficiency tests

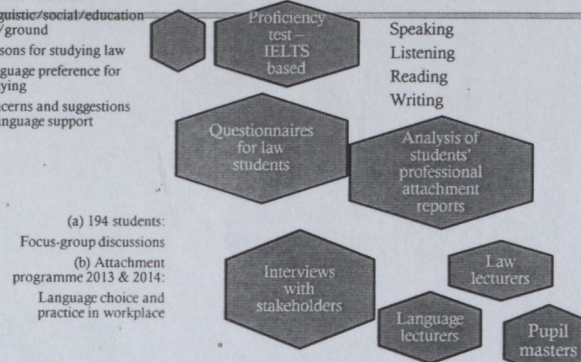
2. Expectations of stakeholders: lawyers, law lecturers

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3. Activities carried out

378/530 students:

Linguistic/social/educational background
Reasons for studying law
Language preference for studying
Concerns and suggestions re language support



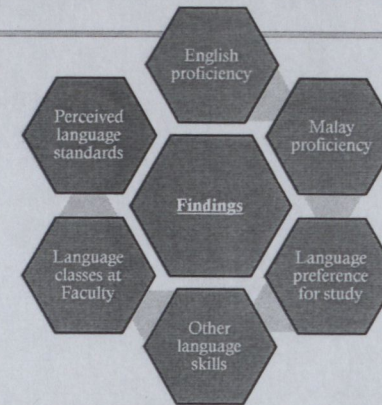
(a) 194 students:

Focus-group discussions

(b) Attachment programme 2013 & 2014:

Language choice and practice in workplace

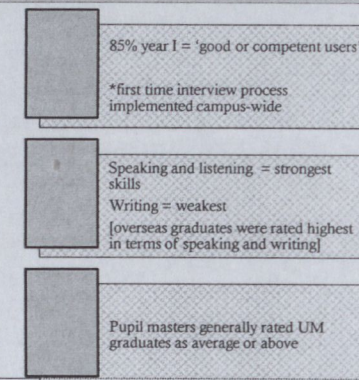
4. INITIAL FINDINGS



4. Findings: language background of students

Number of Languages Used	Year 1	Year 2	Year 3	Year 4
1	39.6%	27.9%	34.4%	17.2%
2	54.7%	57%	46.9%	43.1%
3	2.8%	11.6%	16.4%	20.7%
4 and above	2.8%	3.5%	2.3%	19.0%
Mean no.	1.69	1.91	1.87	2.50
N [378]	106	86	128	58

4. Findings: provisional evaluation of English proficiency



4. Findings: provisional evaluation of Malay proficiency

- Focus groups: less concern about Malay
- Recently qualified lawyers: UM's bilingual teaching policy leans too much toward English
- Linkage between ethnicity and competence in formal Malay appears weak

4. Findings: role of language classes at Faculty

Interviews

No provisions for Malay classes.

No consensus about what kind of English classes appropriate – EGP or EAP or ESP

English language instructors – range of beliefs about what should be addressed in class: enhance English general proficiency? include varying degrees of legal English? address academic writing skills? correct grammar? comprehend local or 'international' speech?

Questionnaires & focus groups

Small minority of students and larger minority of young lawyers felt Malay classes should also be instituted, with focus on legal terminology

Students – welcomed opportunity to be pushed to be more active

4. Findings: Medium of law lectures

Large majority of tutorials and lectures in English.

A few subjects, e.g. Islamic law, taught in Malay.

Some lecturers adopt official 'lectures in Malay, tutorials in English' policy.

Many lecturers insist on English for assignments.

Many lecturers code-switch, typically from English to Malay, with materials in former, explanations in latter.

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4. Findings: language preference for law study

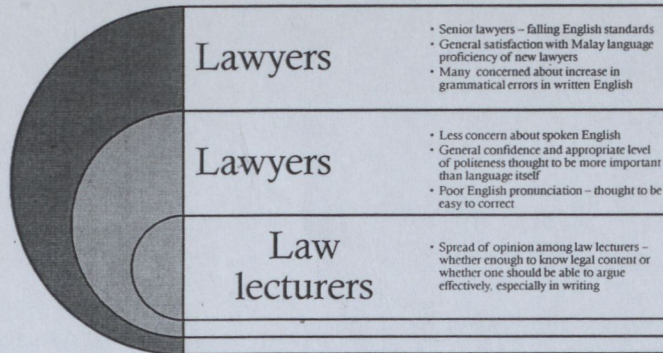
Questionnaires & focus groups:

Strong preference for English. Medium of materials the main factor, followed by perceived preference of lecturer.

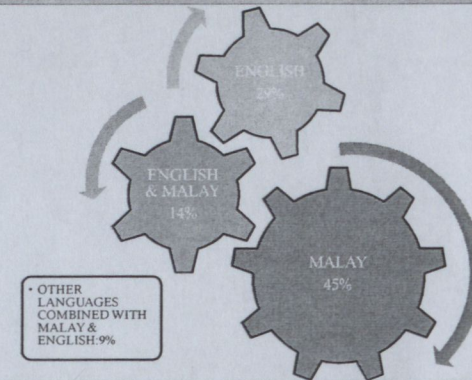
Most lectures & tutorials in English

Code-switching reported for reinforcement of content acquisition or testing bilingual lexical competence

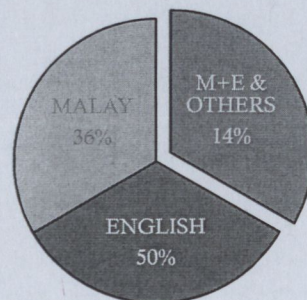
4. Findings: perceived language proficiency of law students



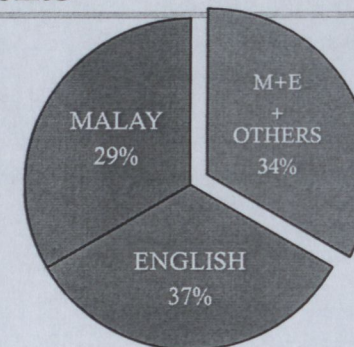
4. Findings: languages used during professional attachment



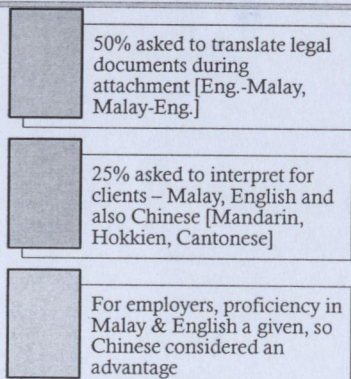
4. Findings: languages used in office meetings



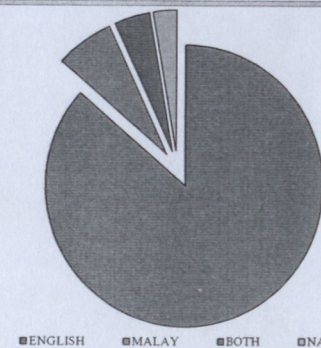
4. Findings: meetings with clients



4. Findings: translation, interpreting & other languages

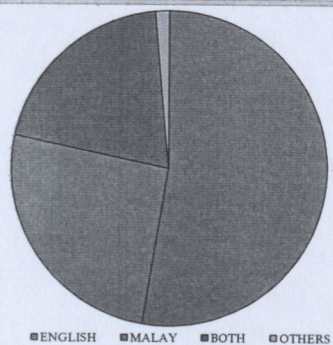


4. Findings: legal research



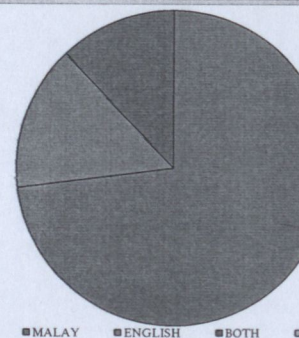
4. Findings: written language in practice

1. CLIENTS – EMAILS/LETTERS

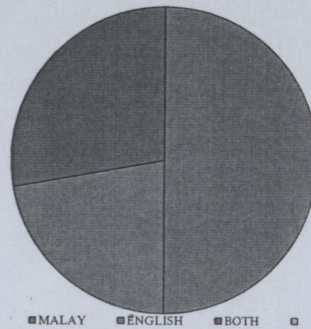


4. Findings: written language in practice

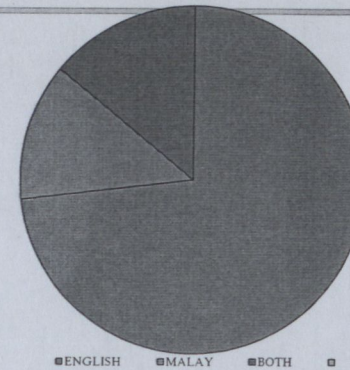
2. GOVT DEPTS – EMAILS/LETTERS



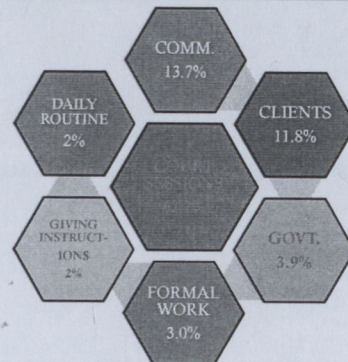
4. Findings: language of documents for court



4. Findings: contracts, other private documents



4. Findings: use of multiple languages at work



4. Findings: language preference & career choice

Expected language N=253

Malay	Equal	Eng
4%	53%	43%

MALAY
Society has more understanding in it.
Rules of court.

ENG We studied law in it.

Used in private sector. I don't want to look inferior.

EQUAL Different kinds of clients.

Range of economic status.

English for big city, Malay for small city.

6. ISSUES UNDER EXPLORATION

- Is current emphasis upon English appropriate?
 - bias as much as in other law-teaching institutions
 - appears to be response to expectations of professional stakeholders/market
 - legal Malay essentially to be learned on the job: reflects relative status of language?
 - evidence employers swayed by English education
 - legal Malay at law schools often confined to learning of lexical lists
- Is there a danger of language-based polarisation?
 - sense of English being more prestigious, more difficult
 - class-division already apparent in South Asian jurisdictions
- Given the continued importance of English, are standards falling? Is this affecting legal practice?
 - role of language classes, choice between general or vocational English

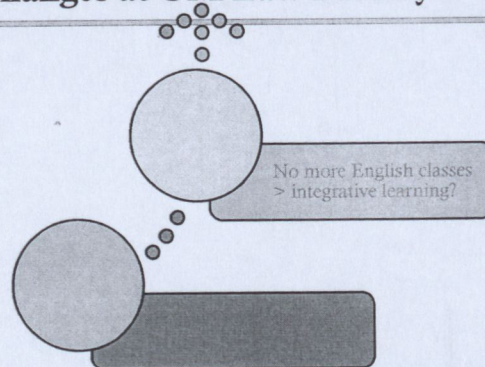
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6. ISSUES UNDER EXPLORATION

- Can language and legal competence be separated?
 - debate among lecturers over assessing writing
 - debate about central role of essay-based evaluation
 - need for more integrated approach involving research, analysis, oral and written presentation?
 - need to ramp up role of mooting & remedies?
- Should English & Malay be separated in legal studies?
 - intensely bilingual nature of most legal practice

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6. ISSUES UNDER EXPLORATION: Changes at UM Law Faculty



Proposed Strategy

